UNITED STATES PATENT AND TRADEMARK OFFICE

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

_____

Ex parte PAUL JOSEPH MCARDLE, CHAD STEVEN AMES,
LAND SHENG YUN, and SCOTT ANTHONY ARVIN

_____

Appeal 2009-008451
Application 10/656,020
Technology Center 2100

_____

Before JOSEPH L. DIXON, HOWARD B. BLANKENSHIP, and
ST. JOHN COURTENAY III, *Administrative Patent Judges.*

DIXON, *Administrative Patent Judge.*

_____

DECISION ON APPEAL [1]

_____

[1] The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

I. STATEMENT OF THE CASE

A Patent Examiner rejected claims 1-30. The Appellants appeal therefrom under 35 U.S.C. § 134(a). We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

A. INVENTION

The invention at issue on appeal relates generally to architectural and engineering projects and to Extensible Markup Language (XML), and in particular, to a method, apparatus, and article of manufacture for organizing and managing architectural projects with supporting XML documents. (Spec. [0003].)

B. ILLUSTRATIVE CLAIM

Claim 1, which further illustrates the invention, follows:

1. A computer-implemented method for defining a project in a computer graphics program comprising:

   (a) obtaining a project file in the computer graphics program comprising general information regarding the project;

   (b) creating a directory structure in the computer graphics program for the project wherein:

   (i) one or more project drawing files are organized into various folders by drawing file type of the one or more project drawing files;

   (ii) the one or more project drawing files are composed of either a building information model for the

project or a report generated from the building
information model; and

(iii) the one or more project drawing files are
organized into the various folders based on the building
information model or the report accordingly;

(c) obtaining a companion file for each project drawing
file, wherein each companion file provides information used to
create the directory structure and comprises information to link
each project drawing file to the project based on the building
information model or the report; and

(d) displaying, in the computer graphics program on a
display device, the one or more project drawing files in the
various folders.

C. REFERENCES

The Examiner relies on the following references as evidence:

Fujieda	2002/0083082 A1	Jun. 27, 2002
Bondy	2002/0191219 A1	Dec. 19, 2002
Halpert	2004/0225958 A1	Nov. 11, 2004
Rappaport	6,850,946 B1	Feb. 1, 2005

D. REJECTIONS

The Examiner makes the following rejections.

Claims 1-9, 11-19 and 21-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over <u>Bondy</u> in view of <u>Halpert</u> and further in view of <u>Fujieda</u>.

Claims 10, 20 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bondy, in view of <u>Halpert</u> and further in view of <u>Fujieda</u> and further in view of <u>Rappaport</u>.

II. ISSUE

Has the Examiner set forth a reasoned conclusion of obviousness of the claimed invention as recited in independent claim 1? Specifically, is independent claim 1 limited to the building industry and a CAD application as Appellants repeatedly argue?

III. PRINCIPLES OF LAW

Obviousness

A claimed invention is not patentable if the subject matter of the claimed invention would have been obvious to a person having ordinary skill in the art. 35 U.S.C. § 103(a); *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007); *Graham v. John Deere Co.*, 383 U.S. 1, 13 (1966). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art. *Graham*, 383 U.S. at 17. *See also KSR*, 550 U.S. at 407

("While the sequence of these questions might be reordered in any particular case, the [Graham] factors continue to define the inquiry that controls.")

In *KSR*, the Supreme Court emphasizes "the need for caution in granting a patent based on the combination of elements found in the prior art," and stated that "[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *KSR*, 550 U.S. at 415-16. The Court explained:

> When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill.

Id. at 417. The operative question is thus "whether the improvement is more than the predictable use of prior art elements according to their established functions." *Id.*

Consistent with *KSR*, the Federal Circuit recently recognized that "[a]n obviousness determination is not the result of a rigid formula disassociated from the consideration of the facts of a case. Indeed, the common sense of those skilled in the art demonstrates why some combinations would have been obvious where others would not." *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1161 (Fed. Cir. 2007) (citing *KSR*, 550 U.S. at 416). The Federal Circuit relied in part on the fact that *Leapfrog* had presented no evidence that the proposed modification was "uniquely challenging or difficult for one of ordinary skill in the art" or "represented an unobvious step over the prior art." *Id.* at 1162.

Similarly, the Federal Circuit recently found that adapting existing electronic processes to incorporate modern technology is obvious when the combination is within an ordinarily skilled artisan's ability:

> When there is a design need or market pressure to solve a
> problem and there are a finite number of identified, predictable
> solutions, a person of ordinary skill has good reason to pursue
> the known options within his or her technical grasp. If this
> leads to the anticipated success, it is likely the product not of
> innovation but of ordinary skill and common sense.
>
> *Muniauction, Inc. v. Thomson Corp.*, 532 F.3d 1318, 1327 (Fed. Cir.
> 2008) (quoting *KSR*, 550 U.S. at 421).

V. ANALYSIS

From our review of Appellants' Specification, we find that Appellants' Specification is drafted by way of examples:

> [0005] As described above, CAD applications are often used to create
> drawings used in the architectural, engineering, and construction
> (AEC) industry. The drawing are often defined by a collection
> (referred to as objects) of one or more graphical elements, such as
> lines, circles, polylines, text, or dimensions. For example, a collection
> of various lines may make up a door or window object. CAD
> programs may treat each object as a single element for creation,
> manipulation, and modification. Some CAD programs may also
> provide objects that are special entities with predefined behaviors and
> display characteristics.

We note that independent claim 1, does not recite any specific field of endeavor which would tie it to the "architectural, engineering, and construction (AEC) industry" or "CAD applications" more than the claimed "computer graphics program."

We find instant claim 1 lacks the context above to be interpreted in the manner in which Appellants desire absent some additional express claim limitations being present therein. Appellants' Specification further goes on to identify a "project structure" in the architectural, engineering, and construction fields as follows:

Project Structure

[0038] In the AEC industry, various parties may undertake to build and complete a project. One or more embodiments of the information provide for the organization and maintenance of information for such projects. In this regard, building information models are organized into projects. FIG. 4A illustrates the concept of a project 400 that is composed of two parts, a building information model 402 and reports 404 generated from the model 402. FIG. 4B further illustrates the components of project 400. As illustrated in FIG. 4B, the building information model 402 is composed of elements 406 and constructs 408, while reports 404 consist of views 410 and plotting sheets 412. Within a project 400, elements 406 are referenced into constructs 408, constructs 408 are referenced into views 410, and views 410 are referenced into plotting sheets 412.

(Spec. 9-10). Again, the difficulty with the "AEC industry" examples is that the invention as expressly claimed provides no context for such a limited interpretation, and we find to do so would amount to reading limitations into the claimed invention. This we cannot do.

Appellants' traverse the rejection of independent claims 1, 11, and 21 for the 9 reasons stated at pages 7 and 8 of the Appeal Brief. We provide succinct responses thereto and further detailed responses subsequently.

1. The Examiner identifies Fujieda as teaching a CAD program having computer graphics program and having computer graphics display and the Examiner identifies Halpert for the displaying (Answer 5 and 6).

2. The Examiner identifies Bondy as teaching a project file which would be in combination with the above teaching of Fujieda as teaching a CAD. (Answer 5).

3. The Examiner identifies Fujieda as teaching a drawing in a computer graphics program. (Answer 6).

4. The Examiner identifies Bondy ([0018] meta data- IDs; [0019] meta data tags for proper identification of resources and to associate the resources with the proper project and documents) as teaching a drawing file having a drawing file type. (Answer 5).

5. The Examiner identifies Bondy ([0019] concerning being stored in folders) as teaching organizing a drawing file into a folder based on a drawing file type. (Answer 5).

6. The Examiner identifies Bondy ([0020] concerning the template) as teaching a building information model or a report from a building information model. (Answer 5).

7. The Examiner identifies Bondy ([0020] concerning being stored in a repository) as teaching a building information model or a report from a building information model. (Answer 5).

8. The Examiner identifies Bondy ([0018-0019] concerning meta data and meta data tags which associate with the proper projects and documents, and we further note paragraph [0021] identifies putting all the information together in a validity proof for printing which would be assembling all the data together which clearly teaches and

evidences a linkage of files in the file system) as teaching a companion file for each drawing file. (Answer 5).

9. The Examiner identifies Bondy [0018-0019] concerning meta data and meta data tags which associate with the proper projects and documents and we further note paragraph [0021] identifies putting all the information together in a validity proof for printing which would be assembling all the data together which clearly teaches and evidences a linkage of files in the file system as teaching a companion file for each drawing file. (Answer 5). Paragraph [0018] identifies two distinct phases, the creation phase and the production phase in figure 3, wherein skilled artisans would have realized that each project is different and would necessarily require a file structure which would be different as identified in box 202.

Response to Appellants' Contentions

Appellants' first contention is that Bondy is directed towards printing a project of documents containing variable data and not a computer graphics program and the printing application of Bondy is not a computer graphics program. (App. Br. 8). However, the Examiner did not rely upon the teachings of Bondy for the computer graphics program limitation/aspects of the claimed invention. Furthermore, the claimed invention merely recites that the method for defining a project is "*in a* computer graphics program" (emphasis added). Therefore, the specifics of the computer graphics program are not expressly recited in the language of independent claim 1 to distinguish the claimed invention. Appellants further argue that printing documents is not even remotely similar to a computer graphics program or

drawings in a computer graphics program. (App. Br. 8). We find no limitations in independent claim 1 detailing the specifics of the computer graphics program or the specifics of the drawings therein with which to distinguish independent claim 1. Therefore, Appellants' arguments are not persuasive of error in the Examiner's showing of obviousness of independent claim 1.

Appellants argue that the limitations with respect to the project drawing files in a computer graphics program, and the drawing files are organized into various folders by the drawing file type of the drawing files provides "context of the invention in that it relates to drawings and drawing files in a computer graphics program." Appellants' reasoning is rather circular by restating the claim language in arguing that it provides context to the claim language again. (App. Br. 8-9). We find Appellants' argument to be unpersuasive of error in the Examiner's showing of obviousness of the claimed invention. Appellants argue that "a drawing file (i.e., a file containing a drawing) is not similar to a document that contains a font or a graphic." (App. Br. 9). While we may agree with Appellants in many specific unrecited and unclaimed limitations and differences, in a general and generic sense, but a file is a file and the rest is nonfunctional descriptive material regarding the file without further limitations thereto to give it context.

Appellants argue that the claimed drawing files are organized into folders by drawing file type and nowhere in Bondy is there a remote reference to organizing files in any location based on the type of file as claimed. (App. Br. 9).

Appellants argue that Bondy described story references for the project in folders based on a configuration file and the configuration file is not a drawing file type. The Examiner explains at page 14 of the Answer that different types of files such as images and fonts are stored in certain different folders where the type of resource defines the folder in which it is stored. We agree with the Examiner.

Appellants argue that the present claims provided that the project drawing files are composed of either a building information model for the project or a report generated from the model and that "throughout the text of the specification as filed, a building information model is an information model for a building ([0015] - [0017], [0038], [0040], etc.). Accordingly, the use of the term 'building information model' in the claims provides a specific meaning and intent that cannot merely be ignored." (App. Br. 9). While we agree with Appellants that terms cannot be ignored, we do not find any "specific meaning" or definitions in these portions of Appellants' Specification. As discussed above, we find no express limitations in the language of independent claim 1 to narrow the interpretation as Appellants may have intended. We find that many of the dependent claims add individual or discrete portions of the overall system that Appellants may have in their "specific meaning and intent" yet it is not found in independent claim 1. Therefore, Appellants' arguments are not persuasive of error in the Examiner showing of obviousness of independent claim 1.

Furthermore, we find that "the one or more project drawing files are composed of either a building information model for the project or a report generated from the building information model" are directed to

nonfunctional descriptive material that does not further limit the method in the claimed invention.

Appellants further argue that the teachings of Bondy's print job template have no relationship to the "building information model as claimed." Appellants further contend that the "structure and use of the various folders and drawing files in the particular folders provides functional advantages in the building industry." (App. Br. 10). We find Appellants' argument is not commensurate in scope with the express language of independent claim 1 and is therefore not persuasive of error in the Examiner showing of obviousness. Furthermore, Appellants' argument seems to discount completely that in the building industry items are printed for use on job sites, etc.

Appellants argue that the drawing files are stored/organized in folders "based on the building information model or report" and that Bondy fails to describe the claimed "building information model." We find Appellants' argument to be unpersuasive of error since the model is not expressly functionally recited in the language of independent claim 1.

Appellants further contend that the companion file is created for each project drawing file and that Bondy's configuration file is a single file that is used to store all document project information which is not created separately for each project file, as claimed. (App. Br. 10). The Examiner at page 16 of the Answer identifies that "[i]t is respectfully submitted that the entire project could represent a single document which would read on the project drawing file for which the configuration file stores resources in folders. Therefore it is respectfully submitted that Bondy teaches these limitations." We agree with the Examiner's limited example to meet the

claim limitations that where there is only one file there would only need to be one companion file where the configuration file would meet this limited situation as the Examiner has identified for obviousness due to the claim breadth. Therefore, we find Appellants' argument to be unpersuasive of error in the Examiner showing of obviousness. Additionally, we note that Bondy teaches in paragraph [0018] the use of metadata to permit tracking in reporting of status and other variables. We further note that paragraph [0019] states that "the resources for the project are stored in folders, i.e. directories in accordance with the configuration file and tagged with appropriate and meta data tags to identify the resources and associate the resources with the proper project and documents."

We further note that paragraphs [0020]-[0021] discuss proofing wherein it would have been readily apparent to those skilled in the art to "keep in mind that all resources have been tagged with meta data for quick retrieval. In step 220, the print job is prepared by importing variable data such as personalized data from the customer and the variable data is integrated into the fixed data template." To do this, Bondy must prepare some companion file where metadata for each drawing is kept track of so that it may be imported quickly. We find that the metadata is equivalent to the companion file for each file which stores data about the data and the configuration file co-locates all that information in a single location which is readily accessible. We find Appellants' argument to be unpersuasive of error since the "model" itself is not expressly functionally recited in the language of independent claim 1.

Appellants argue that a single configuration file of Bondy cannot possibly teach a companion file that is used to "link each and every project

drawing file to a project wherein the link is based on a building information model or report as claimed." (App. Br. 11). Appellants' argument goes beyond the scope of the express language of independent claim 1 and therefore is not persuasive of the error in the Examiner's showing of obviousness.

Appellants argue that the ability to link a file based on the building information model provides the ability to manage drawing files that have different meaning in different folders and such functional advantages further illustrated in dependent claims 6-9. Appellants' arguments regarding the dependent claims do not show error in the Examiner's obviousness rejection of independent claim 1. (App. Br. 11).

Appellants argue that the Examiner's reliance upon the Halpert reference is in error wherein Halpert is not in the building information industry and cannot be applied. (App. Br. 11). While Halpert may not be in the "building information industry", the Examiner merely relied upon it as a teaching of an output display device for computer graphics program and we find Appellants' argument to be unpersuasive of error in the Examiner's reliance thereupon. We find that it would have been obvious to one of ordinary skill in the art at the time the invention was made to have had some form of output device as suggested by either Halpert or Fujieda. Therefore, Appellants' argument does not show error in the Examiner's obviousness rejection.

Appellants contend that the contents of the files themselves "absolutely provide functional limitations with respect to the content of the files" (App. Br. 11). But Appellants do not explain how or why these claimed limitations provide functional limitations to the computer

implemented method. Appellants contend that "rather than merely organizing files into random folders, the type of drawing -i.e., drawing file types are used to organize the files into particular folders." (App. Br. 12). Appellants further contend that it is "impossible to separate the claim limitations and their functional aspects relating to both how the files are organized and how the files are linked to a project." (App. Br. 12). We disagree with Appellants' wherein the claim language does not set forth the functional aspects relating to how the files are organized and how the files are linked, but merely sets forth that there is "information" to organize and to link. The "information" does not perform the function of organizing or linking and is therefore nonfunctional descriptive material.

Appellants argue that Bondy described storing resources for the project in folders based on a configuration file which is not a "drawing file type" (App. Br. 12). Appellants maintain that paragraph [0018] is relied upon to teach a directory structure where the files are organized into various folders based upon "file content" which does not "even remotely [refer] to organizing files into a folder based upon a [drawing] file type. (App. Br. 12). We disagree with Appellants and find that it is merely the label placed upon the information that differs. While Appellants may find that significant, we do not find that it distinguishes over the prior art combination as applied by the Examiner in the rejection.

With respect to Appellants' arguments that the claim provides that the drawing files are composed of "either a building information model or report" (App. Br. 13), we find that the "model" is not expressly recited, but the file is recited. The claimed "building information model or report" are further descriptors of the nonfunctional descriptive material which are within

the file. This information does nothing. It may be used, but it does nothing functionally. In later dependent claims, an XML document (claim 3) which may possess some function is recited, but independent claim 1 recites no such detail and to import such limitations would be improper.

Appellants argue that the "companion file is used to "create the directory structure" and nowhere does Bondy teach creation of a directory structure. (App. Br. 13). The Examiner has equated the companion file with the metadata tags (Answer 5, 15, and 16) which we found to be reasonable, as discussed above.

Appellants argue that it is "improper and meritless to attempt to merely utilize a reference that discloses a computer graphics program [Fujieda] and combine such a reference with an entirely separable and unrelated reference. (App. Br. 13). Appellants dispute the Examiner's proffered motivation in the final rejection wherein each reference is in a specific environment. We note the Examiner has relied upon the teachings of the references for generic teachings which would be applicable to a wide range of fields of endeavor and note that the preamble of the instant claimed invention is directed to merely a "computer implemented method for defining a project on a computer graphics program." We find no specific field of endeavor recited therein nor in the body of the claim with which to support Appellants' asserted distinctions between the various teachings of the applied prior art references. Therefore, we do not find Appellants' arguments to be persuasive of the error in the Examiner's combination of teachings of the prior art references.

At page 14 of the Appeal Brief, Appellants reiterate the same with respect to the data contents being functional in the claims and discusses a

hypothetical if the claims were modified to remove the word "drawing" from the "files." As discussed above, we do not find Appellants' argument to be persuasive of error in the Examiner showing of obviousness and furthermore the hypothetical modification of the claims does not show error in the Examiner's showing of obviousness. Therefore, we will sustain the rejection of representative independent claim 1 and independent claims 11 and 21 falls therewith.

With respect to dependent claims 2, 12, and 22, we address representative claim 2. Appellants argue that the dependent claims provided "general information regarding the project is selected from a group consisting of..." which is closed to the inclusion of materials other than those recited. (App. Br. 14-15). The Examiner maintains at pages 6, 7, and 17 of the Answer that the general information is nonfunctional descriptive material which does not functionally limit independent claim 1. We agree and adopt the Examiner's position. We find that the content of the material does not further limit the method of independent claim 1. Therefore, we will sustain the rejection of representative dependent claim 2.

With respect to dependent claims 3, 13, and 23, we address representative claim 3. Appellants argue that the project drawing file is an XML document. (App. Br. 15). The Examiner maintains at page 17 of the Answer that Halpert teaches the use of XML files or documents for storing a project. We agree with the Examiner and find that the language of the dependent claim 3 does not set forth any specific limitations with regards to the XML file or document with which to distinguish the claimed invention. Therefore, we will sustain the rejection of representative dependent claim 3.

With respect to dependent claims 4, 14, and 24, we address representative claim 4. Appellants rely upon the same argument advanced with respect to dependent claim 3 which we did not find persuasive of error. (App. Br. 17). Therefore, we will sustain the rejection of representative dependent claim 4.

With respect to dependent claims 5, 15, and 25, Appellants argue that the claims provide specific limitations which cannot be ignored and are specific to the "building industry" and provide context and scope for the claims. (App. Br. 17-18). The Examiner maintains at page 18 of the Answer that the labels assigned to the folders are nonfunctional descriptive material. We agree with the Examiner as discussed above. Appellants further argue that the claim limitations provide context for the claims and provide "a specific number of folders," "establishes a specific corresponding folder for each type of specific drawing file," "and establishes different folders used for files within a building information model than those used for a report." (App. Br. 18). We find Appellants' argument to be unpersuasive of error in the Examiner showing wherein the claim to "labels" merely recite labels and could be identified as folders "1", "2", "3", "4" with no functional change in the operation of independent claim 1.

With respect to dependent claims to 6, 16, and 26, we will address representative claim 6. Again, Appellants argue that the claims are directed to "the building industry and a CAD application" (App. Br. 18). We find this argument unpersuasive since it is not commensurate with the scope of claim 6. Appellants argue that the element type drawing file is a set of geometry that is repeated one or more times throughout a project and that Halpert does not teach this limitation. (App. Br. 17). The Examiner

maintains that the geometry is simply data since the functionality of repeating these elements is not clear, so importing and repeating of an element is taught by Halpert. (Answer 19). We agree with the Examiner. Appellants further argue that "[i]t is clear that repeating a set of geometry in a project is not even remotely similar to repeating an element used in a website." (App. Br. 19). We find Appellants' argument to be unpersuasive since it is not commensurate with the scope of claim 6. Claim 6 merely recites a label placed on the element type and further recites a "wherein clause" and does not set forth an active step in the method of independent claim 1.

With respect to dependent claims and 7, 17, and 27, we will address representative claim 7. Again, Appellants argue that the claims are directed to "the building industry and a CAD application" (App. Br. 19). We find that argument to be unpersuasive since it is not commensurate with the scope of claim 7. Appellants repeat the same arguments advanced above with respect to the functional limitations and organization and functional capabilities of the independent claim. (App. Br. 19-20). The Examiner maintains at page 19 of the Answer that claim 7 is directed to nonfunctional descriptive material. Again, we agree with the Examiner.

With respect to dependent claim 8, 18, and 28, we will address representative claim 8. Appellants argue that "[a]gain, claims 8, 18, and 28 (in combination with claims 5, 15, and 25) are specifically directed towards the building industry and a CAD application having elements, constructs, views, and sheets." (App. Br. 20-21). We find Appellants' argument to be unpersuasive since it is not commensurate with the scope of claim 8. Appellants further argue:

> There is not even a remote possibility that such claim language
> merely depicts non-functional descriptive material. Not only is
> a portion of a project selected based upon user specified data,
> but the view type drawing file automatically assembles
> appropriate constructs to represent such a portion. Thus, there
> are two separate functional aspects in these claims.

(App. Br. 21). We find Appellants' argument to be unpersuasive since it is not commensurate with the scope of claim 8 since claim 8 does not set forth an active step in the method of independent claim 1. Additionally, we note that the teachings of Bondy with respect to proofing teaches and fairly suggests automatically assembling portions of an overall larger project using smaller part/files, as discussed above.

With respect to dependent claims 9, 19, and 29, we will address representative claim 9. Appellants argue the same argument of the building industry and the CAD application which we did not find persuasive above. We agree with the Examiner's position as set forth at pages 20-21 of the Answer. Therefore, we will sustain the rejection of dependent claim 9.

With respect to dependent claims 10, 20, and 30, Appellants argue that what is notoriously lacking is the ability to define a user definable category and value for project information followed by storage of such a category and value in the companion file. (App. Br. 23.) First, we note that the category and value have not been defined in the claimed invention and can be assigned to be anything by the Examiner. We find that as long as the Examiner's prior art rejection stores some undefined category and undefined value in the companion file, then the claim has been met. Appellant argues that "Harper" [*sic*, Halpert] fails to teach or suggest user definable category and value for project information followed by storage of such a category and

value in a companion file and Rappaport similarly lacks the same teaching.
(App. Br. 23-24). The Examiner maintains at page 21 of the Answer that
Rappaport merely teaches a "user defined" element in combination with the
teachings of Halpert as discussed at page 12 of the Answer. We agree with
the Examiner's position and find that Appellants' argument merely argues the
individual teachings of the references rather than what they would have
suggested to one skilled in the art as asked by the Examiner. Therefore, we
will sustain the rejection of dependent claim 10.

We have further considered Appellants' arguments in the Reply Brief
and find that they are substantially similar to those set forth in the principal
Appeal Brief where Appellants contend that the independent claims are
directed to the building industry and CAD application. As discussed above,
we find Appellants' arguments to be unpersuasive of error in the Examiner's
showing of obviousness.

Appellants at page 15 of the Reply Brief maintained that Appellants'
Specification relates a building information model to a building (see e.g.,
paragraph [0044]). We disagree with Appellants and find that paragraphs
[0044] - [0049] merely show exemplary interpretations or embodiments for
this portion of Appellants' invention and does not necessarily define the term
to import a limitation into the claimed invention.

VI. CONCLUSION

For the aforementioned reasons, Appellants have not shown error in
the Examiner's showing of obviousness claims 1-30.

VII. ORDER

We affirm the obviousness rejections of claims 1-30.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

<u>AFFIRMED</u>

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